

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

FULL CIRCLE UNITED, LLC, a New York limited liability company,

Plaintiff,

v.

SKEE BALL, INC., a Pennsylvania corporation,

Defendant.

SKEE BALL, INC., a Pennsylvania corporation,

Plaintiff,

v.

FULL CIRCLE UNITED, LLC, a New York limited liability company,

Defendant.

Case No.: CV11-5476 (DLI) (LB)

Consolidated with:

Case No. 11-CV-6277 (DLI) (LB)

**NOTICE OF RE-FILING OF SKEE
BALL, INC.'S NOTICE OF MOTION TO
DISMISS OR STAY AND FOR A MORE
DEFINITE STATEMENT, DOCUMENT
NO. 7, PER OCTOBER 23, 2013 COURT
ORDER OF HON. MAGISTRATE JUDGE
LOIS BLOOM**

Honorable Judge Dora L. Irizarry, Presiding
Magistrate Judge Lois Bloom

Complaint in lead case filed: November 8, 2011

Complaint in consolidated case filed: October 5, 2011 (USDC, Northern District California)

Consolidated case transferred to EDNY:
December 23, 2011

Counterclaim filed: January 27, 2012
(E-Filing)

NOTICE

TO: THE HONORABLE JUDGE DORA L. IRIZARRY, THE HONORABLE
JUDGE LOIS BLOOM, AND TO ALL PARTIES AND THEIR ATTORNEYS
OF RECORD:

PLEASE TAKE NOTICE that, pursuant to the October 23, 2013 Order of the Hon.
Magistrate Judge Lois Bloom, SKEE BALL, INC. ("SBI"), the defendant in Case No. CV11-
5476 (DLI) (LB), hereby re-files its Notice of Motion to Dismiss or Stay and For a More
Definite Statement, previously filed on January 20, 2012 as Document No. 7, which is attached

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hereto as Exhibit "A".

Dated: November 1, 2013

By: **KRAUSS PLLC**
/s/ _____
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Attorneys for Skee Ball, Inc., a Pennsylvania corporation

Exhibit “A”

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

FULL CIRCLE UNITED, LLC, a New York limited liability company;

Plaintiff,
v.

SKEE BALL, INC., a Pennsylvania corporation,

Defendant.

-) Case No.: CV11-5476 (DLI) (LB)
-)
-) **ORAL ARGUMENT REQUESTED**
-)
-) **Documents Filed Herewith:** Memorandum
-) of Law; Request for Judicial Notice;
-) Declaration of Richard J. Idell; [Proposed]
-) Order
-)
-) Honorable Judge Dora L. Irizarry, Presiding
-) Magistrate Judge Lois Bloom
-)
-) Complaint filed: November 8, 2011
-)
-) **Date of Service: January 20, 2012**
-)
-) (E-Filing)

NOTICE OF MOTION TO DISMISS OR STAY AND FOR A MORE DEFINITE STATEMENT

TO: PLAINTIFF AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that upon the attached Memorandum of Law, Request for Judicial Notice and Declaration of Richard J. Idell filed herewith, and the pleadings, files and such other and further documentary and oral evidence and matters as may be brought before the Court on this matter, attorneys for Defendant SKEE BALL, INC., a Pennsylvania corporation (“Defendant” or “SBI”), by and through its attorneys, KRAUSS PLLC, will move, and hereby do move this Court, the Honorable Judge Dora L. Irizarry, located in Courtroom 4A S, United States Courthouse, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, on a date convenient to the Court, for an Order granting SBI’s

Motion to Dismiss or Stay and for a More Definite Statement in the above-captioned matter, pursuant to F.R.C.P. 12(b)(6) and 12(e). Specifically, SBI moves:

1. For an Order dismissing the Complaint because each of the claims for relief arise out of the same transaction or occurrence that is the subject matter of the first-filed SBI Action (defined below), and thus must be pled as compulsory counterclaims in the SBI Action pursuant to F.R.C.P. 13(a) as FULL CIRCLE UNITED, LLC, a New York limited liability company (“Plaintiff” or “Full Circle”) has now plead in the SBI Action. In the alternative, the Court should order that Full Circle prosecute its claims as compulsory counterclaims, which it recently filed in the first-filed SBI Action, and stay this action until the SBI Action is resolved.
2. If the Complaint is not dismissed pursuant to Paragraph 1, for an Order pursuant to F.R.C.P. 12(b)(6) dismissing those allegations of Count IV (Breach of Contract) without leave to amend that relate to any purported oral agreement between Full Circle and SBI, since any such oral agreement is barred by New York law and by the written 2010 Agreement; and
3. If the Complaint is not dismissed pursuant to Paragraph 1, for an Order dismissing Count IV (Breach of Contract) in its entirety pursuant to F.R.C.P. 12(b)(6), without leave to amend, on the grounds that Full Circle has not and cannot allege any facts to support its claim for breach of contract; and
4. If Count IV (Breach of Contract) is not dismissed, SBI seeks an Order requiring Full Circle to provide a more definite statement with regard to Count IV pursuant

- to F.R.C.P. 12(e) on the grounds that the claim for relief is so vague and ambiguous that SBI cannot reasonably prepare a response; and
5. If the Complaint is not dismissed pursuant to Paragraph 1, for an Order dismissing Count V (Breach of the Covenant of Good Faith and Fair Dealing) pursuant to F.R.C.P. 12(b)(6), without leave to amend, on the grounds that Full Circle has not and cannot allege any facts to support its claim for breach of the covenant of good faith and fair dealing; and
 6. If Count V (Breach of the Covenant of Good Faith and Fair Dealing) is not dismissed, SBI seeks an Order requiring Full Circle to provide a more definite statement with regard to Count IV pursuant to F.R.C.P. 12(e) on the grounds that the claim for relief is so vague and ambiguous that SBI cannot reasonably prepare a response; and
 7. If the Complaint is not dismissed pursuant to Paragraph 1, for an Order dismissing Count VI (Unfair Competition), pursuant to F.R.C.P. 12(b)(6), without leave to amend, on the grounds that Full Circle has failed to state a claim upon which relief can be granted; and
 8. If Count VI (Unfair Competition) is not dismissed, SBI seeks an Order requiring Full Circle to provide a more definite statement with regard to Count VI pursuant to F.R.C.P. 12(e) on the grounds that the claim for relief is so vague and ambiguous that SBI cannot reasonably prepare a response; and
 9. If the Complaint is not dismissed pursuant to Paragraph 1, for an Order dismissing Count VII (Sherman Act Violation) pursuant to F.R.C.P. 12(b)(6),

without leave to amend, on the grounds that Full Circle has failed to state a claim upon which relief can be granted; and

10. If Count VII (Sherman Act Violation) is not dismissed, SBI seeks an Order requiring Full Circle to provide a more definite statement with regard to Count VII pursuant to F.R.C.P. 12(e) on the grounds that the claim for relief is so vague and ambiguous that SBI cannot reasonably prepare a response.

Dated: January 20, 2012

KRAUSS PLLC

By:

/s/

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